

JOHN N. HOSTETTLER
8TH DISTRICT, INDIANA

COMMITTEE ON ARMED SERVICES

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PROJECTION FORCES
READINESS

COMMITTEE ON THE JUDICIARY

SUBCOMMITTEES:
THE CONSTITUTION
CHAIRMAN, IMMIGRATION,
BORDER SECURITY AND CLAIMS



Congress of the United States
House of Representatives

1214 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-4636

INTERNET: John.Hostettler@mail.house.gov
<http://www.house.gov/hostettler/>

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PARKE	WARRICK

June 17, 2005

William E. Moschella
Assistant Attorney General
U.S. Department of Justice
Office of Legislative Affairs
Washington, D.C. 20530

Dear Mr. Moschella,

Thank you for the recent response to my letter requesting the President to direct the United States Marshals Service not to enforce any federal district court order to remove the Ten Commandments display at the Gibson County Courthouse pursuant to *Russelburg v. Gibson County*. While I appreciate the description of the primary role and mission of the United States Marshals Service, the actual provision of law which authorizes activity of the Marshals Service is found in 28 U.S.C. §566(c) which states:

Except as otherwise provided by **law** or Rule of Procedure, the United States Marshals Service **shall execute** all **lawful** writs, processes, and orders issued under the authority of the United States, and shall command all necessary assistance to execute its duties.
[emphasis added]

That being said, I conclude from the official position of the Administration outlined in your letter of April 19, 2005, that this President's U.S. Marshals Service will "comply with any such order... called upon to enforce" by the federal courts. Apparently, the Administration believes the order to be "lawful" and consistent with the First, Tenth and/or Fourteenth Amendments of the Constitution.

However, if the President considers the Supreme Court decision in *Stone v. Graham* 446 U.S. 39 (1980) to be in violation of the Constitution, then he obviously has the power to not enforce that decision, as evidenced by the above citation. It would follow that the President would be compelled not to enforce the District Court's -- and subsequent Courts' -- decisions regarding *Russelburg v. Gibson County*.

As an aside, the President's endorsement of the Supreme Court precedent requiring the removal of the Ten Commandments from public property and the resulting execution of orders issuing from such subsequent decisions comes as a surprise to me.

Nevertheless, the constituents of the Eighth District of Indiana thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, reading "John N. Hostettler". The signature is written in a cursive style with a large, looping "J" and "H".

John N. Hostettler
Member of Congress

Enclosure